

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*  
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

69cv07941-BB

RIO CHAMA STREAM SYSTEM  
Section 1, Chama Mainstream

Upper Frijoles Ditch  
Lower Frijoles Ditch  
Subfile Nos. 569 & 570

**MOTION TO REVISE PRIORITY DATE**  
**OF UPPER FRIJOLES DITCH AND LOWER FRIJOLES DITCH**

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer (“State”) and moves the Court to revise the priority date of the Upper Frijoles Ditch and the Lower Frijoles Ditch in the Chama Mainstream Section (Section 1), and as grounds states the following:

1. The Order of the Court in Subfiles 569 (Karl Bode) and 570 (Agapito Duran) decreed the irrigation water rights of Karl Bode and Agapito Duran under the Upper Frijoles and the Lower Frijoles Ditches in Section 1. *See Order* filed January 20, 1969 (Doc. No. 623). The water rights of Bode and Duran under these two ditches have a priority date of 1906. *See id.*

2. After the entry of the Court’s Order in Subfiles 569 and 570, Karl Bode acquired the interests of Agapito Duran in the land and water rights under Subfile 570. Mr. Bode is now the current owner of all of the land and water rights under both Subfiles 569 and 570.

3. The State has reviewed the available historical information concerning the land in Subfile 569 (Tracts 28.1 & 28.2) and Subfile 570 (Tract 28.3), viewed these tracts in the field, and believes that the priority date of the Upper and the Lower Frijoles Ditches and the water rights under

these ditches should be revised to 1734.

4. Karl Bode supports the granting of this motion and the revision of the priority date of the Upper and the Lower Frijoles Ditches.

WHEREFORE the State of New Mexico requests the Court to amend the *Order* filed January 20, 1969 (Doc. No. 623) and to revise the priority date of the water rights described in Subfiles 569 and 570 as described above.

Respectfully submitted,

/s/ Ed Newville  
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Special Assistant Attorney General  
Office of State Engineer  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 10th day of July, 2009 I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, and served the following non-CM/ECF Participants in the manner indicated:

via first class mail, postage prepaid addressed as follows:

Karl M. Bode  
P.O. Box 707  
Abiquiu, NM 87510-0707

/s/ Ed Newville  
EDWARD G. NEWVILLE